MAR 1 1956
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 724

THE STATE OF TEXAS,
Petitioner,

v.

RECONSTRUCTION FINANCE CORPORATION AND FEDERAL FACILITIES CORPORATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS

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Section 56 of Article 3, Texas Constitution 9

IN THE

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OCTOBER TERM, 1955

No.

THE STATE OF TEXAS,

Petitioner,

v.

RECONSTRUCTION FINANCE CORPORATION AND FEDERAL FACILITIES CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on January 31, 1956.

Opinions Below

The judgment of the District Court is shown in the record on page 41. The District Court did not write an opinion. The opinion of the Circuit Court of Appeals (R. 33) is not yet reported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on January 31, 1956. (R. 41) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1251(1).

Question Presented

Whether the Respondents are liable to Petitioner for either interest or penalties, or both, occasioned by late payment of ad valorem taxes on real property owned by them, or either of them, in the State of Texas under the provisions of Section 10 of the Reconstruction Corporation Act, as amended, 15 U. S. C., §607, and Article 7336 of the Revised Civil Statutes of Texas.

Statutes Involved

The pertinent parts of Section 10 of the Reconstruction Corporation Act, as amended, 15 U. S. C., § 607, and Article 7336, Revised Civil Statutes of Texas, are printed in Appendix A, infra pp. 14, 15.

Statement

Petitioner instituted this suit in behalf of itself and Jefferson County, Texas, in the United States

District Court for the Eastern District of Texas against Respondents to recover unpaid and delinquent ad valorem taxes on real property owned by Respondents, together with six per cent interest after delinquency and a penalty of eight per cent. The six per cent interest and the eight per cent penalty are both provided for in Article 7336, Revised Civil Statutes of Texas. (Appendix, infra pp. 14, 15) Section 10 of the Reconstruction Finance Corporation Act provides "that any real property of the corporation shall be subject . . . to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." The District Court without written opinion entered judgment for Petitioner for its taxes, interest and penalty. (R. 18)

The court below reversed that part of the District Court's judgment which allowed recovery of the interest and penalties and remanded for further proceedings not inconsistent with its written opinion. (R. 41) The court below quoted what it said was the pertinent part of Article 7336, R. C. S., but only quoted that portion which sets out the penalties. The quoted portion reads as follows:

> ". . . unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to wit: During the month of February one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%)

per cent; during the month of June, five (5%) per cent; and on and after the first of July, eight (8%) per cent."

The portion of Article 7336 not quoted by the court below, which provides for interest eo nomine, reads:

> "All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency."

The lower court, after quoting only the penalty provision, then stated:

> "Obviously, Article 7336 is a penalty statute and the penalties and interest which are authorized thereunder are no part of the tax. That is what the Article says in plain simple language."

The unquoted portion of said Article which provides for six per cent interest, to the contrary, in "plain and simple language" states that the delinquent taxes shall bear *interest*. Interest is not a penalty, and that portion of Article 7336 which allows interest is not a "penalty statute."

The lower court in rendering its opinion did so on the ground that under the substantive law of Texas the penalties and interest formed no part of the tax. As will hereinafter be shown, under the substantive law of Texas, the penalties and interest provided for in Article 7336 do constitute a part of the tax.

Specification of Errors To Be Urged

The Circuit Court of Appeals erred:

(1) In holding that Respondents are not liable for interest on their delinquent ad valorem taxes.

(2) In holding that Respondents are not liable for penalties on their delinquent ad valorem taxes.

(3) In holding that the provision of Article 7336, R. C. S., which reads: "All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency" is a penalty provision.

(4) In erroneously stating that under the substantive law of Texas, the interest and penalties on delinquent ad valoreum taxes constitute no part of the tax.

(5) In not affirming the judgment of the District Court.

Reasons for Granting the Writ

1. Conflict with Supreme Court decisions.

The decision of the court below in the instant case and the decision in *Missouri-Pacific Railroad Company, et al v. Ault*, 256 U. S. 554, 563, upon the authority of which the instant case was decided, are directly in conflict as to Petitioner's claim for interest. *This Court in the Ault case held that interest is not a penalty. The lower court in the case at bar held that interest is a penalty.* Ault brought suit under the provisions of an Arkansas statute which provided that whenever a common carrier shall discharge an employee, with or without cause,

it shall pay him his wages within seven days thereafter; and that if payment is not duly made, "then as a *penalty* for such non-payment the wages of such servant or employee shall continue, from the date of the discharge or refusal to further employ, at the same rate until paid." Ault's contention as to liability rested wholly upon Section 10 of the Federal Control Act (Section 3115 3/4J) which provided that carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws or at common law. General Order No. 50[1] issued under the authority of the Act, after providing that suits shall be brought against the Director General of Railroads recites, "Provided, however, that this order *shall not* apply to actions, suits or proceedings for the recovery of fines, *penalties* and forfeitures."[2] This Court held that the amount recovered by Ault, over and above the wages and *interest* due thereon, was in the nature of a penalty. Penalties were expressly excluded under General Order 50, supra. This Court allowed recovery of the actual wages earned *including interest* thereon.

[1] "It is therefore ordered, that actions at law, suits in equity, and proceedings in admiralty hereafter brought in any court based on contract, binding upon the Director General of Railroads, claim for death or injury to person, or for loss and damage to property, arising since December 31, 1917, and growing out of the possession, use, control, or operation of any railroad or system of transportation by the Director General of Railroads, which action, suit, or proceeding but for federal control might have been brought against the carrier company, shall be brought against William G. McAdoo, Director General of Railroads, and not otherwise: Provided, however, that this order shall not apply to actions, suits or proceedings for the recovery of fines, penalties and forfeitures. * * *"

[2] Emphasis supplied throughout unless otherwise indicated.

The decision of the court below in the instant case is also in direct conflict with the rationale of the decision in *Reconstruction Finance Corp. v. Beaver County*, 328 U. S. 204. That case specifically involved the determination of the intent of Congress in its use of the phrase "any real property" of these governmental agencies "shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." Mr. Justice Black, speaking for a unanimous Court, stated at page 210:

> "To permit the State to tax, and yet to require them to alter their long standing practice of assessments, and collections, would create the kind of confusion and resultant hampering of local tax machinery which we are certain Congress did not intend. The fact that Congress subjected Defense Plant Corporation's properties to local taxes 'to the same extent according to its value as other real property is taxed' indicated *an intent* to integrate Congressional permission to tax with established local tax assessment and collection machinery."

The identical question here presented was before the Court in *School District of Warminster TP v. Reconstruction Finance Corporation*, 72 Fed. Supp. 149. The Court, in an opinion by Judge McGranery, a former Attorney General of the United States, held R. F. C. liable for the interest and penalties. The Court stated at page 50:

> ". . . the exact question in this case has been foreclosed by the language of the Supreme Court in Reconstruction Finance Corporation v. Coun-

ty of Beaver, 328 U.S. 204, 66 S. Ct. 992, 90 L. Ed. 1172."

We do not believe that Congress intended that governmental agencies, when subject to state taxation, have the privilege of choosing their own tax paying date; and have the right to make late payments without suffering the same pecuniary liabilities as other taxpayers, especially in view of the fact that the state taxing statute does not in any manner effect a discrimination against the government or run counter to the terms of the Act.

2. **The lower court's decision is erroneous.**

The decision of the court below is erroneous in that such decision is in conflict with the *Beaver County* case, supra, which holds that in construing the taxing provisions of the Reconstruction Finance Corporation Act, the substantive law of the State governs.

The lower court recognized the applicable law as set forth in the *Beaver County* case when it stated:

> ". . . but we do agree with appellee that the determination of whether penalties and interest, as such, are a part of the ad valorem tax must be governed by the substantive law of the State of Texas. Reconstruction Finance Corporation v. Beaver County, 328 U.S. 204."

However, the lower court erroneously concluded that under the substantive law of Texas the interest and penalties are no part of the tax, citing *Jones v. Williams*, 121 Tex. 94, 45 S.W. 2d 130 (1931). It is true that the court in the cited case held that interest

on delinquent taxes was in the *nature* of a penalty, as the word "penalties" was used in the Texas Constitutional provision[3] which prohibits the Legislature from "remitting fines, *penalties* and forfeitures by special law."

The Supreme Court of Texas in a unanimous opinion, subsequent to the *Jones* case, held that the penalties and interest provided for in delinquent ad valorem taxes were included in the word "taxes." We refer to *Kubena, et al v. Hatch, et al.*, 144 Tex. 627, 193 S.W. 2d 175 (1946).

The same construction was given the word "taxes" by the Legislature of Texas and the county attorneys of all the two hundred fifty-four counties of Texas, as evidenced by the following constitutional amendment and statute passed in pursuance thereof, and the administrative construction placed thereon.

On November 8, 1932, the people of Texas adopted the following constitutional amendment:

> "The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent *taxes* which have been due for a period of at least ten years."[4]

[3] Section 56 of Article 3, Texas Constitution.

[4] Section 55 of Article 3, Texas Constitution.

In pursuance of the above constitutional amendment, the Texas Legislature in 1935 passed an Act[5] which provided: "The collection of all delinquent, ad valorem *taxes* due the State, County, Municipality or other defined subdivision that were delinquent prior to December 31st, 1919, is forever barred."

All delinquent ad valorem *taxes* prior to December 31st, 1919, bore interest and were subject to the statutory penalties. The statutory interest and penalties are by the express terms of Article 7336, R.C.S. made a liability and obligation of all delinquent ad valorem taxpayers. Note that the Constitutional amendment and the enabling statute only employ the word "taxes." That the interest and penalties were included in and were considered a part of the barred tax cannot be doubted. All of the various county attorneys in the 254 counties of Texas, who are charged with the collection of delinquent taxes, penalties and interest, for a period of twenty-one years have also considered the interest and penalties to be a part of the tax, as there has never been any attempt to enforce collection of the penalties and interest on taxes that were delinquent prior to December 31st, 1919.

Even if under the substantive law of Texas the interest and penalties are not a part of the "tax" itself, Congress used the term "taxation," not "tax"; and since Congress did not define the word "taxation," it should be given its generally accepted mean-

[5] Acts 1935, 44th Leg., ch. 128, codified as Article 7336f, Revised Civil Statutes of Texas.

ing in ascertaining the Congressional intent. The following is the generally accepted meaning of the word "taxation":

> "Taxation, in its broadest and most *general* sense, includes every charge or burden imposed by the sovereign power upon persons . . . for the use and support of the government . . . 'Taxation' embraces two phases, one relating to the levying or imposition of the taxes on persons or property; the other to the collection of the taxes levied." 51 Am. Jur., § 2, p. 35.

In construing this same taxing provision of the Reconstruction Finance Corporation Act, this Court in the *Beaver County* case, supra, stated:

> ". . . The fact that Congress subjected Defense Plant Corporation's properties to local taxes 'to the same extent according to its value as other real property is taxed' indicated an intent to integrate Congressional permission to tax with established local tax assessment and collection machinery."

That the interest and penalty provisions of Article 7336 constitute a part of the collection machinery cannot be doubted. In 51 Am. Jur., § 970, p. 848, this significant language is found:

> "The continuance of regular and uniform receipt of the public revenue is essential to the continued existence of the state; it cannot tolerate delay in the payment of taxes, and to induce prompt payment of taxes when due, the legislatures of the several states have very generally imposed penalties upon taxpayers who fail to pay their taxes within a specified period . . .

". . . The object is not merely punishment of the taxpayer, but is in furtherance of public duty in the interest of public welfare . . ."

In fact, the interest and penalty provisions of Article 7336 constitute the substantive law of Texas in reference to delinquent taxes and come clearly within the second phase of the word "taxation" as defined by American Jurisprudence, supra, and is a requisite and essential part of the collection machinery.

3. Importance of question involved.

Clearly, the question presented is of vital importance in the administration and enforcement of the tax laws of all the states, and is likewise of importance in the orderly administration of the various governmental agencies organized under the Reconstruction Finance Act. It is likewise important in the administration of all the National Banks in the United States and other governmental agencies[6] whose property is permitted by identical language to be taxed by the states. If this petition for writ of certiorari is not granted and the lower court's opinion is allowed to stand, it will naturally follow that a great number of these agencies, especially the National Banks which are engaged in the lending of money, will feel free to choose their own tax paying date and lend the tax money at interest until such time as they are forced to pay only the tax itself.

[6] Federal Reserve Banks (Title 12, U.S.C.A., Section 531); National Banks (Title 12, U.S.C.A. (3), Section 548); Federal Joint Stock Land Banks (Title 12, U.S.C.A., Section 933); Federal Farm Mortgage Corporations (Title 12, U.S.C.A., Section 1020f); National Agricultural Credit Corporations (Title 12, U.S.C.A., Section 1261); Federal Home Loan Banks (Title 12 U.S.C.A., Section 1433); National Housing Authorities (Title 12, U.S.C.A., Sections 1714-1722).

The natural result will be a multiplicity of suits, pending a final determination of the question herein presented.

The ad valorem tax is the main source of revenue in Texas for counties, cities and school districts; and their fiscal operations are geared to their right to timely collect their taxes. There will be numerous defaults of their pecuniary obligations if the various governmental agencies are allowed to choose their own tax paying date. Heretofore, with few exceptions, all of such agencies have paid their taxes before delinquency—evidently to avoid interest and penalties.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,
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Jefferson County, Texas
Counsel for Petitioner.

APPENDIX A

(Statutory Provisions Cited and Quoted)

15 U. S. C., § 607:

> ". . . except that any real property of the Corporation . . . shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

Article 7336, R. C. S.:

> ". . . unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of February, one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent and on and after the first day of July, eight (8%) per cent.
>
> ". . .
>
> "(d) All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency . . .
>
> "(e) The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any State, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding years are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls for said year.

"Penalties, interest and costs accrued against any land, lots and/or property need not be entered by the Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a statutory charge with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him."

No. 724

FILED
MAR 1 1956
HAROLD B. WILLEY,

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 15592

RECONSTRUCTION FINANCE CORPORATION and FEDERAL FACILITIES CORPORATION,

Appellants,

versus

THE STATE OF TEXAS,

Appellee.

Appeal from the United States District Court for the Eastern District of Texas.

(January 31, 1956.)

Before BORAH and JONES, Circuit Judges, and DAWKINS, SR., District Judge

BORAH, Circuit Judge: This action was brought by the State of Texas in behalf of itself and Jefferson County, Texas, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor and Collector of taxes for Jefferson County, against Reconstruction

Finance Corporation and Federal Facilities Corporation to recover alleged delinquent and unpaid ad valorem taxes for the year 1953 on certain property described in the complaint in the amount of $233,750.00 together with penalties and interest thereon.

The case was tried to the District Court upon an agreed statement of facts which set forth in substance the following: It was stipulated that ad valorem taxes for the year 1953 in the amount of $233,750.00 were legally levied and assessed against the real property owned by Reconstruction Finance Corporation in Jefferson County, Texas and that said taxes in the above amount became delinquent on February 1, 1954; that on or about May 1, 1954 Reconstruction Finance Corporation duly and properly tendered to plaintiff the net amount of ad valorem taxes due, but such tender was refused by the plaintiff by reason of its claim that penalties and interest had then accrued under Article 7336 of the Revised Civil Statutes of Texas, 1925, as amended, and Reconstruction Finance Corporation did not at such time nor subsequent thereto tender the penalties and interest provided under said statute; that by Executive Order of the President of the United States dated June 22, 1954, Federal Facilities Corporation was organized and the functions of Reconstruction Finance Corporation, relating to the Synthetic Rubber Program, including claims arising from such program, were transferred to Federal Facilities Corporation, effective at the close of business June 30, 1954. This Order included the claim involved herein; that thereafter, subsequent to the filing of this action "Reconstruction Finance Corporation and/or Federal Facilities Corporation" tendered the sum of $233,750.00 into the

registry of the Court in payment of the net amount of the taxes due, but refused to tender or pay the interest and penalties claimed to be due. It was further stipulated that as of July 30, 1954, the amount of the penalties and interest which would accrue to the plaintiff and to each of the several taxing agencies under and by virtue of Article 7336 in the event it should be determined that the defendants have a legal obligation to pay such interest and penalties, was the sum of $25,712.50; and that such penalties and interest will increase at the rate of one-half of one percent of the amount of taxes due each calendar month or fraction thereof beginning August 1, 1954.

The trial court entered judgment against the defendants for the amount of the delinquent taxes less the sum of $124,300.00 which had theretofore in December, 1954 been withdrawn and paid to Jefferson County, Texas under an order of the Court, which provided that the payment should in no wise affect the issues or waive any rights of the parties, and likewise entered judgment against the defendants, jointly and severally, for the additional sum of $33,198.00, the total amount of penalties and interest which the trial court determined was then due on the amount of ad valorem tax, with interest thereon at 6% per annum. It is from this portion of the judgment which awards to plaintiff penalties and interest that the defendants have appealed.

Thus, the question presented on this appeal from the judgment below is whether the defendants are liable to plaintiff for penalties and interest on delinquent ad valorem taxes on real property owned by them, or either of them, in the State of Texas under Article 7336 of the Revised Civil Statutes of Texas. Before answering that

question it is perhaps advisable that we now state clearly that both of the defendants in this action are corporate agencies of the United States whose stock is owned wholly by the United States government. Thus, and as the Supreme Court pointedly said in speaking of the Reconstruction Finance Corporation: "That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely Governmental purposes."[1] And in this connection it is, of course, well-settled under U. S. Constitution, Art. IV, §3, Cl, 2, that a State cannot tax property of the United States or any of its instrumentalities without the consent of Congress, whether such tax is strictly for State purposes or for local and special objects. Under the Constitution, Congress has the exclusive authority to determine whether and to what extent its instrumentalities, such as Reconstruction Finance Corporation, shall be immune from state taxation.

By Section 10 of the Reconstruction Finance Corporation Act, as amended, 15 U.S.C. §607, Congress made it clear that it did not permit States and local governments to impose taxes of any kind on the franchise, capital reserves, surplus income loans, and personal property of the Reconstruction Finance Corporation or any of the subsidiary corporations "except," and this is the important part, "that any real property of the Corporation shall be subject to special assessments for local improvements and shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." It is the scope of this exception which

[1] *Cherry Cotton Mills, Inc., Petitioner v. United States*, 327 U. S. 536.

is at issue in this case and it is to this provision that the State must of necessity turn for its authority and power to impose penalties and interest upon appellants.

The appellants contend that there is no language to be found in this provision of the Act which indicates that Congress either intended or consented that the Reconstruction Finance Corporation or any of its subsidiary corporations would be subjected to the payment of penalties and interest in addition to ad valorem taxes and that no presumption to the contrary is to be indulged inasmuch as a waiver of a defined tax immunity must be strictly construed.

Appellee on the other hand insists that when Congress permitted the real estate of the Reconstruction Finance Corporation to be taxed by the State and local taxing districts to the same extent as other real property is taxed by the State, it was aware of the applicable law of the respective States in regard to the imposition of penalties and interest upon delinquent taxes, and clearly intended that local law be applied not only as to the assessment of taxes, but to the machinery provided by State or local law for the collection and the enforcement of timely payment. We are unwilling to accept this argument as a whole, but we do agree with apellee that the determination of whether penalties and interests, as such, are a part of the ad valorem tax must be governed by the substantive law of the State of Texas. *Reconstruction Finance Corporation v. Beaver County*, 328 U. S. 204. Since Congress did not define the term "taxation" as that word is used in Section 10 of the Act, it is, therefore, clear by force of the *Beaver County* decision that the Congressional purpose can best

be accomplished by application of settled State rules in determining whether the word "taxation" as used in Section 10 includes penalties and interest.

Article 7336 of the Revised Civil Statutes of Texas, which is the sole statutory authority by which appellee claims it has the right to collect penalties and interest in addition to the ad valorem tax levied and assessed against the real property of the appellant, reads in pertinent part as follows:

> ". . . unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of February one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent; and on and after the first of July, eight (8%) per cent.
>
> ". . .
>
> "The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any state, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls for said year.
>
> "Penalties, interest and costs accrued against

any land, lots and/or property need not be entered by the Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a *statutory charge* with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him." (Italics ours)

Obviously, Article 7336 is a penalty statute and the penalties and interest which are authorized thereunder are no part of the tax. That is what the Article says in plain simple language. It is needless to say that it has been so construed by the Supreme Court of Texas. *Jones v. Williams*, 121 Tex. 94, 45 S.W.2d 130.

Consequently, we think it is clear that the word "taxation" as used in Section 10 of the Act does not include penalties and interest. Construing the waiver of exemption from State and local taxation strictly as we must[2] and do, it is not shown that Congress consented to the imposition under State authority of penalties and interest which under the settled law of the State formed no part of the tax. *U. S. v. Nelson, et al.*, 91 F. Supp. 557. The Supreme Court in analogous situations has followed a like strict rule of construction in determining whether an Act of Congress which involved consent of the United States or any of its government instrumentalities is to be charged with a tax or penalty or interest. *United States*

[2] *Oklahoma ex rel. Oklahoma Tax Commission, et al. v. Barnsdall Refineries, Inc., et al.*, 296 U. S. 521.

v. N. Y. Rayon Importing Co., Inc., 329 U. S. 654, 658; *Missouri-Pacific Railroad Company, et al. v. Ault*, 256 U. S. 554, 563. See also *Board of Directors of Red River Levee District No. 1 of Lafayette County, Arkansas v. Reconstruction Finance Corporation*, 170 F. 2d 430.

For the reasons stated that part of the judgment appealed from is reversed and the case is remanded for further and not inconsistent proceedings.

REVERSED.

A True Copy:
Teste:
SEAL

JOHN A. FELLHAN, JR.
Clerk of the United States Court of
Appeals for the Fifth Circuit.

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TRANSCRIPT OF RECORD
CAPTION

In The

DISTRICT COURT OF THE UNITED STATES

For The Eastern District of Texas
Beaumont Division

Civil Action No. 2696

The State of Texas,

Plaintiff,

vs.

Reconstruction Finance Corporation
and Federal Facilities Corporation,

Defendants.

Be It Remembered That at a special hearing of the United State District Court for the Eastern District of Texas, in the Fifth Circuit, held on the 8th day of March, 1955, at Tyler, Texas, with the Honorable Joe W. Sheehy, United States District Judge, presiding, the following proceedings were heard, to wit:

PLAINTIFF'S ORIGINAL PETITION

Filed September 30, 1954
(Title Omitted)

To The Honorable Judge Of Said Court:

The State of Texas, hereinafter called Plaintiff, brings this suit in behalf of itself and Jefferson County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor and Collector of Taxes for said County. Plaintiff complains of the Reconstruction Finance Corporation, a corporation created by Act of Congress of the United States, and of the Federal Facilities Corporation, a federal corporation created by the Secretary of the Trea-

sury of the United States, pursuant to Executive Order under authority granted by Act of Congress of the United States (see paragraph II, infra), hereinafter called Defendants, and would respectfully show the following:

I

Defendants own or claim an interest in real property situated in said Jefferson County, which property is described as set forth in the inventory submitted by Reconstruction Finance Corporation to the Tax Assessor-Collector of Jefferson County and which inventory is copied below:

Inventory Of Property

Owned by Reconstruction Finance Corporation, Rio Grande National Building, Dallas, Texas, and returned for assessment of taxes for the year 1953 by Attorney-in-Fact to the Assessor of Jefferson County, Texas

Abstract No.	Original Grantee	Acres Rendered
41	Residue T. F. McKinney League....	
	Lots 1, 2, 3 & 4, Blk 1, Better View Heights Add.	
	Lots 8 & 9, Blk. 2, Better View Heights Add.	
	Lot 10 & W/2 of 11, Blk. 2, Better View Heights Add.....	
	Lots 13 & 14, Blk 1, Better View Heights Add.	
	Tract 143, 5.409 Acs T. F. McKinney League	628.000
41	Lots 5, 6, 7, 8, 9, 10, 11 & 12, Blk 1; Lots 1, 2, 3, 4, 5, 6, 7, E/2 of 11, and all of 12 & 13, Blk 2; also Lots 4, 5 & 6, Blk 3 all in Better View Heights Add.	
41	5.87 Acs T. F. McKinney League (Texas Company 35 ft.).....	
41	2.99 Acs T. F. McKinney League (Texas Public Service Canal).....	
	Lots 9 to 12 inc., Blk 17, Rachford-Dearing S/D	

Abstract No.	Original Grantee	Acres Rendered
	Lots 14 & 27, Neches Gardens.....	
	1.27 Acs Pt Lot 28, Neches Gardens	
	1.82 Acs Pt Lot 6, Blk 8, Rng B, Pt. Arthur Land Co.....	
	2.767 Acs Pt. Lot 3, Blk 9, Rng B, Pt. Arthur Land Co.....	
27	Tract 53, 4.789 Acs Jos. Grigsby League	
	Part of Lot 7, Blk 8, Rng B, Pt. Arthur Land Co.....	70.802
27	Tract 55, 30.041 Acs Jos. Grigsby League	
393	Pt. Tract 1, 17.034 Acs Burr & Caswell Sur.	
41	Tract 170, 2.94 Acs T. F. McKinney Sur.	
27	2.23 Acs Pt Lot 1, Wm. Gentz Est. S/D out of Jos. Grigsby League.....	
27	2.41 Acs Pt. Lot 2, Wm. Gentz Est. S/D out of Jos. Grigsby League.....	

INCLUDING ALL TAXABLE PROPERTIES OF EVERY KIND AND DESCRIPTION LOCATED ON ABOVE TRACTS OF LAND WHICH ARE OPERATED BY NECHES BUTANE PRODUCTS CO. (PLANCOR #933), THE B. F. GOODRICH COMPANY (PLANCOR #983), THE U. S. RUBBER COMPANY (PLANCOR #983A) AND RECONSTRUCTION FINANCE CORPORATION (PLANCOR #1347)

TOTAL VALUE OF ALL PROPERTY..... $9,000,000.00

I, Charles L. South, do solemnly swear that the above inventory rendered by me contains a full, true, and complete list of all taxable property owned by Reconstruction Finance Corporation in the above jurisdiction subject to taxation in such jurisdiction by the

laws of this State, on the first day of January, A.D. 1953, to the best of my knowledge and belief.

RECONSTRUCTION FINANCE CORPORATION

By CHARLES L. SOUTH
Attorney-in-Fact

Subscribed and sworn to before me this 20th day of April, A.D., 1953.

MARTHA RIDDLE

MARTHA RIDDLE

(SEAL) .....
Notary Public, Dallas County, Texas

II

By executive order of the President of the United States dated June 22, 1954, No. 10539, Federal Facilities Corporation was organized and the functions of Reconstruction Finance Corporation relating to the Synthetic Rubber Program, including claims arising from such program, were transferred to Federal Facilities Corporation, effective at the close of business June 30, 1954. This order covered the claim involved herein. Such order and the creation of Federal Facilities Corporation was authorized by Act of Congress in the Rubber Act of 1948, 62 Stat 105, as amended, 50 U.S.C.A. App. #1929.

III

There are delinquent ad valorem taxes justly due, owing, and unpaid against the above described property as shown on the attached schedule marked "Exhibit A", which schedule is specifically referred to and made a part of this petition for all purposes. Such delinquent taxes are for the year 1953. Said property is assessed to Defendants, Reconstruction Finance Corporation, et al, on the tax rolls

of Jefferson County for said year. The amount of the taxes so delinquent for such year is $233,750.00, together with penalties and interest provided by law or legally accruing thereon as of September 1, 1954, in the amount of $28,051.00, making a total of $259,463.50, for which sum Plaintiff sues. Said penalties and interest will increase at the rate of one-half of one percent of the amount of taxes due each calendar month or fraction thereof until said taxes are paid.

IV

That all said taxes were authorized by law and each political subdivision in whose behalf this suit is brought was legally constituted and authorized to levy, assess and collect the same and all of said taxes were duly and legally levied and assessed against said real property and the owners thereof and Plaintiff now has and asserts a lien on each tract of real property described and mentioned above to secure the payment of all taxes, penalties, interest and costs due thereon; and all things required by law to be done have been duly and legally performed by the proper officials.

V

That all of said above described real estate was, at the time said taxes were assessed, located within the boundaries of the said Jefferson County and of each political subdivision in whose behalf this suit is brought.

VI

The Attorney whose name is signed hereto is legally authorized and empowered to institute and prosecute this action on behalf of Plaintiff.

Premises considered, Plaintiff prays the Court that Defendants be cited in due form of law to answer herein, and upon hearing hereof, that Plaintiff have judgment against Defendants for the total amount of said taxes, together with all penalties, interest, and costs authorized by law to be taxes, and other charges or expenses that may be or become legally due and owing, together with foreclosures of tax liens against the above described real estate securing the amount due against each above described; that an Order of Sale be issued and that said real estate be levied upon and sold as provided by law, and for such other relief, both general and special, either at law or in equity, to which Plaintiff may show itself entitled.

RAMIE H. GRIFFIN

Criminal District Attorney
of Jefferson County, Texas

By /s/ JOHN R. DEWITT

JOHN R. DEWITT,
Assistant

No.

DEAR SIR.—The following is a statement of the amount to redeem

DESCRIPTION OF PROPERTY TO BE REDEEMED

Abst. No.	Cert. No.	Sur. No.	Original Grantee	Acres redeemed	Lot No.	Blk. No.	Division	City or Town

TO WHOM ASSESSED	Year Delinquent		STATE TAXES Ad Valorem	STATE TAXES Interest and Pen.	COUNTY TAXES Ad Valorem	COUNTY TAXES Road No. 1	COUNTY TAXES Bmt. Nav.	COUNTY TAXES Drainage District No. 7	COUNTY TAXES School District No.	COUNTY TAXES TOTALS	Cost	Amount Due Each Year
Reconstruction Finance Corp	1953	Taxes			129330.00		1660.00				1.00	261801.00
		Int.-Pen.		9604.00	14946.00		178.00					
		Taxes										
		Int.-Pen.										
		Taxes										
		Int.-Pen.										
		Taxes										
		Int.-Pen.										
		Taxes										
		Int.-Pen.										
		Taxes										
		Int.-Pen.										
		Taxes										
		Int.-Pen.										
		Taxes										
		Int.-Pen										
Total Taxes, Interest, Penalty and Cost			79200.00	9604.00	144276.00		1838.00	32676.00		261800.00	1.00	261801.00

TOTAL TO REDEEM . . $ 261,801.00

W T Blackmon

By

RETURN THIS STATEMENT WITH YOUR REMITTANCE.

MAKE CHECKS PAYABLE TO W. T. BLACKMON, (Tax Collector)

BEAUMONT, TEXAS.

ORIGINAL ANSWER OF DEFENDANTS

Filed December 6, 1954

(Title Omitted)

To The Honorable Judge Of Said Court:

Now comes Reconstruction Finance Corporation, a corporation created by an Act of Congress of the United States, and the Federal Facilities Corporation, a federal corporation created by the Secretary of the Treasury of the United States pursuant to Executive Order under authority granted by the Act of Congress of the United States, defendants herein, and file this their answer to plaintiff's original petition and shows to the Court:

I

By executive order of the President of the United States dated June 22, 1954, No. 10539, Federal Facilities Corporation was organized and the functions of Reconstruction Finance Corporation relating to the Synthetic Rubber Program, including claims arising from such program, were transferred to Federal Facilities Corporation, effective at the close of business June 30, 1954. This order covered the claim involved herein. Such order and the creation of Federal Facilities Corporation was authorized by Act of Congress in the Rubber Act of 1948, 62 Stat 105, as amended, 50 U.S.C.A. App; #1929; that by virtue of said order all interest of Reconstruction Finance Corporation in the property described in paragraph 1 of plaintiff's original petition was transferred and assigned to Federal Facilities Corporation, and Reconstruction Finance Corporation no longer has an interest in said property.

II

Defendants admit that the ad valorem taxes for the year 1953 due the State of Texas and the County of Jefferson, Texas, on the property described in plaintiff's original petition, are unpaid; that the amount of taxes so delinquent for such year is $233,750.00; that heretofore on the 27th day of April, 1954, said amount was tendered to the Tax Collector of Jefferson County, Texas, in settlement of the taxes due for the year 1953, which amount the said Collector refused to accept in payment of said taxes. Defendants show the Court that they are each federal agencies and that the federal government owns all stock in said corporations and they specifically deny that portion of paragraph 3 of plaintiff's original petition wherein plaintiff alleges that penalty and interest are due from the defendants, and say that they are not liable for the penalty and interest as set out in plaintiff's original petition, and Federal Facilities Corporation here and now tenders into the Court the amount of $233,750.00 which has heretofore been tendered to plaintiff, as the total amount due plaintiff by these defendants, or either of them.

III

In answer to paragraph 4 of plaintiff's original petition, defendants admit that all necessary actions were duly and timely taken by the plaintiff to subject the real property described in plaintiff's petition to payment of the ad valorem taxes for the year 1953, but defendants specifically deny that plaintiff has a lien on said real property described in plaintiff's original petition or any part thereof, for said taxes, penalty or interest; that the defendants, being governmental agencies, are not liable for penalty and interest and that the taxes do not create a lien on the real property of a governmental agency.

IV

Defendants admit the allegations contained in paragraph 5 of plaintiff's original petition.

WHEREFORE, premises considered, defendants pray the Court that the plaintiff take nothing of the defendants, or either of them, except the sum of $233,750.00 heretofore tendered into this Court by the Federal Facilities Corporation, and that they, and each of them, recover of the plaintiff all cost in their behalf expended.

/s/ B. H. FLY

.....

B. H. FLY

Attorney for Defendants
Reconstruction Finance Corporation
and Federal Facilities Corporation

Copy of Answer delivered to
plaintiff's Attorney in person.

STIPULATION OF COUNSEL

Filed December 14, 1954

(Title Omitted)

It is agreed by and between the parties hereto, each acting by and through its attorney of record, that the following stipulation may be considered by the Court in entering judgment hereon and the facts stipulated herein may be accepted by the Court as true, it being the intentions

of the parties hereto to confine the judgment of the Court to one question of law.

1.

This Court has jurisdiction to hear and determine all matters of law tendered by the pleadings of the parties hereto.

2.

Reconstruction Finance Corporation is a federal agency incorporated by Act of Congress, (15 U.S.C.A., Section 601-619) and at all times material to this suit owned real property situated in Jefferson County, Texas, subject to ad valorem taxation by the plaintiff; Federal Facilities Corporation is a federal corporation created by the Secretary of the Treasurer of the United States pursuant to Executive Order under authority granted by Act of Congress of the United States.

3.

All necessary actions were duly and timely taken by the plaintiff to subject the real property owned by Reconstruction Finance Corporation situated in Jefferson County, Texas, to the payment of the ad valorem taxes and for the year 1953 the ad valorem taxes regularly and legally levied and assessed against the said property were as follows:

The State of Texas	$ 79,200.00
Jefferson County, Texas	124,300.00
Beaumont Navigation District	1,650.00
Jefferson County Drainage District No. 7	28,600.00
TOTAL	$233,750.00

4.

That said ad valorem taxes became due and payable on October 1, 1953 and became delinquent on February 1, 1954.

5.

On or about May 1, 1954 Reconstruction Finance Corporation duly and properly tendered to the plaintiff the net amount of the taxes due, that is $233,750.00, but such tender was refused by the plaintiff because at such time the plaintiff then contended that penalties and interest had accrued under and by virtue of Article 7336, Revised Civil Statutes of Texas, 1925, as amended, and Reconstruction Finance Corporation did not at such time nor subsequent thereto tender the penalties and interest provided under said statute. By Executive Order of the President of the United States dated June 22, 1954, No. 10539 Federal Facilities Corporation was organized and the functions of Reconstruction Finance Corporation relating to the Synthetic Rubber Program, including claims arising from such program, were transferred to Federal Facilities Corporation, effective at the close of business June 30, 1954. This order covered the claim involved herein. Such order and the creation of Federal Facilities Corporation was authorized by Act of Congress in the Rubber Act of 1948, 62 Stat 105, as amended, 50 U.S.C.A. App. #1929.

6.

Reconstruction Finance Corporation and/or Federal Facilities Corporation have tendered the sum of $233,750.00 in payment of the net amount of taxes due (but exclusive of penalties and interest) into the registry of this Court, but Reconstruction Finance Corporation and Federal Facilities Corporation decline to make a tender of the interest and penalties.

7.

As of July 30, 1954, the amount of the penalty and interest which would accrue to each of the several taxing agencies pursuant to Article 7336 of the Revised Civil Statutes of Texas, if defendants have a legal obligation to pay such interest and penalty, was as follows:

Penalty and interest due the State of Texas	$ 8,712.00
Penalty and interest due Jefferson County	13,673.00
Penalty and interest due Beaumont Navigation District	181.50
Penalty and Interest due Jefferson County Drainage District number 7	3,146.00
TOTAL	$25,712.50

8.

That in the event the defendants, Reconstruction Finance Corporation and/or Federal Facilities Corporation are liable for penalties and interest, such penalties and interest will increase at the rate of one-half of one percent of the amount of taxes due each calendar month or fraction thereof beginning August 1, 1954.

Question Of Law

The sole question of law tendered by the pleadings and the evidence and this stipulation of counsel is as follows:

Are the defendants, or either of them, liable for penalties and interest on delinquent ad valorem taxes on real property owned by them or either of them in the State of Texas, as provided in Article 7336, Vernon's Civil Statutes of the State of Texas, and the Constitution and Laws of the State of Texas?

The parties agree, further, that if the foregoing question is answered in the affirmative, judgment should be entered for the plaintiff for the taxes, penalties and interest due in accordance with the stipulation of counsel set forth above. If the foregoing question is answered in the negative, judgment should be rendered for the plaintiff for the amount of taxes tendered by the defendants into the registry of the Court, apportioning the same in accordance with the foregoing stipulation and denying to the plaintiff any recovery as and for penalties and interest contended for by the plaintiff.

IN TESTIMONY WHEREOF, the parties hereunto execute this agreement with the joint request that the Court approve and order the same filed and consider this stipulation in rendering judgment in this cause.

THE STATE OF TEXAS,
Plaintiff

By /s/ FRANK M. ADAMS
Its Attorney of Record

RECONSTRUCTION FINANCE CORPORATION AND FEDERAL FACILITIES CORPORATION,
Defendants

By /s/ B. H. FLY
Their Attorney of Record

APPROVED and order filed this 14th day of November, A.D. 1954.

(Signed) LAMAR CECIL
Judge Presiding

MOTION BY JEFFERSON COUNTY

Filed December 23, 1954

(Title Omitted)

Comes now Jefferson County, and would show unto the Court that Jefferson County is a party in interest to the above entitled and numbered cause. That by stipulation of counsel in said cause, it has been agreed that there is due and owing to Jefferson County, Texas, the sum of One Hundred Twenty-four Thousand Three Hundred Dollars, for ad valorem taxes on the property owned by the defendants herein, in Jefferson County. There is no conflict between the parties with reference to this amount, which is owed by the defendants to Jefferson County, Texas.

II

Jefferson County would further show unto the Court that its budget for the year 1954, was based on the estimated revenue which would accrue to Jefferson County from the various sources and that the sum of One Hundred Twenty-four Thousand Three Hundred Dollars was included in such estimate. That the failure to collect said sum has caused great inconvenience to Jefferson County and its offices and agents. And the loss of said revenue to Jefferson County threatens to impair some of the services of Jefferson County.

Wherefore, Jefferson County prays that this Honorable Court order the sum of One Hundred Twenty-four Thousand Three Hundred Dollars be paid from the regististry of the Court to the Treasurer of Jefferson County, Texas, and that said Court further order that the payment of this

sum shall in no wise effect the issues joined in this suit, nor shall the payment of this sum be eluded to by any of the parties hereto except by agreement of all parties. And further that the withdrawal of this fund by Jefferson County shall in no wise prejudice any rights of any of the parties to this action in anywise.

/s/ FRANK M. ADAMS

.....

FRANK M. ADAMS

Assistant Criminal District Attorney,
Attorney for the State of Texas and
Jefferson County, Texas.

By .....
Deputy

ORDER

Filed December 23, 1954

This day came on to be heard the motion of the State of Texas, and of Jefferson County, and it appearing to the Court that the sum of One Hundred Twenty-four Thousand and Three Hundred Dollars ($124,300) is due and owing to Jefferson County, Texas, by the Defendants for ad valorum taxes for the year 1953. And it further appearing to the Court that this fact is not in controversy in this cause.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the Clerk of this Court pay to Jefferson County, Texas, the sum of One Hundred Twenty-four Thousand and Three Hundred Dollars ($124,300) from the funds deposited in the registry of this Court by the Defendants in this cause.

It is further ORDERED, ADJUDGED AND DECREED that the payment of this sum shall in no wise effect the issues in this suit, nor is the payment of this sum be alluded to by the parties hereto and that the payment of said sum and the acceptance of said payment shall not waive any rights with any of the parties to this suit, may have.

Signed this 23rd day of December, 1954.

(Signed) LAMAR CECIL
Judge

APPROVED AS TO FORM:

/s/ FRANK M. ADAMS
Attorney of Record
for the Plaintiff

/s/ B. H. FLY
Attorney of Record
for the Defendant

JUDGMENT
Filed April 8, 1955
(Title Omitted)

BE IT REMEMBERED that on the 8th day of March, 1955, there came on regularly to be heard the above styled and numbered cause wherein the plaintiff is the State of Texas, in behalf of itself and Jefferson County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor-Collector of taxes for said County, and wherein Reconstruction Finance Corporation and the Federal Facilities Corporation are defendants, and came the plaintiff, by and through its attorneys of record, and came the defendants, by and through their attorneys of record, and both parties announced ready for trial, and no jury being demanded, the Court proceeded to hear the cause upon the pleadings, stipulations of the parties, briefs and oral argument; and, based upon the pleadings, stipulations, and record, the Court finds that:

I

In the year 1953, defendant Reconstruction Finance Corporation rendered certain real properties in Jefferson County, Texas for taxation to the Assessor-Collector of taxes for said County, said property being described in said rendition.

II

Ad valorem taxes on the property so rendered were assessed for said year in the following amounts:

(1) State taxes including Seawall taxes	$79,200.00
(2) Jefferson County taxes	$124,300.00
(3) Beaumont Navigation District taxes	$1,650.00
(4) Drainage District No. 7 taxes	$28,600.00
Total	$233,750.00

III

On or about May 1, 1954, defendants duly and properly tendered to the plaintiff through the Tax Assessor-Collector of said County the net amount of the aforesaid taxes due in the sum of $233,750.00, which tender was refused by plaintiff because at such time the plaintiff then contended that penalties and interest had accrued under and by virtue of Article 7336, Revised Civil Statutes of Texas, 1925, as amended, by reason of defendants' failure to pay said amount of taxes before February 1, 1954.

IV

Defendants refused to pay any amount as penalties or interest on said taxes and this suit was filed by plaintiff on September 30, 1954.

V

On December 6, 1954, defendants paid into the registry of this Court the said sum of $233,750.00 to be held subject to the orders of this Court.

VI

In the month of December, 1954, Jefferson County, Texas, one of the parties in interest in this cause, moved the Court to withdraw from said sum deposited by defendants the sum of $124,300.00, as to which sum there was no controversy between the parties, and which motion was granted by this Court in December, 1954, and said sum was on

December 31, 1954 withdrawn by Jefferson County, Texas, under an order of this Court which provided that the payment of this sum shall in no wise affect the issues in this suit, and that said payment and the acceptance of said payment shall not waive any rights which any of the parties to this suit may have.

The State of Texas and the other political subdivisions whose taxes are collected by the Assessor-Collector of taxes for Jefferson County, Texas filed no motion to withdraw the remaining sum deposited in the registry of this Court, or any part thereof.

VII

The penalty and interest claimed and calculated upon the basis of such penalty and interest as is provided in Article 7336, V. C. S., on the taxes of Jefferson County is in the sum of $16,780.50 up to the date said sum was withdrawn by Jefferson County from the registry of the Court.

The penalty and interest claimed by the State of Texas, as provided in Article 7336, V. C. S., calculated up to and through March, 1955 on State taxes, which includes the sum of $33,000 Seawall taxes, is in the sum of $11,880.00.

The penalty and interest claimed on Beaumont Navigation District taxes, calculated upon the basis of the provisions of Article 7336, V. C. S., is the sum of $247.50, up to and including March, 1955.

The penalty and interest claimed on the taxes of Drainage District No. 7 of Jefferson County, calculated upon the basis of the provisions of Article 7336, V. C. S., up to and including March, 1955 is the sum of $4,290.00.

It appearing to the Court that there remains on deposit with the Clerk the sum of $109,450.00, which said sum should be paid to the Assessor-Collector of taxes for Jefferson County, Texas for the use and benefit of the plaintiff herein and all political subdivisions whose taxes are collected by the said Assessor-Collector;

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the Clerk of this court pay to the Assessor-Collector of Taxes of Jefferson County, Texas the said sum of One Hundred Nine Thousand, Four Hundred Fifty Dollars ($109,450), which payment shall be without prejudice to the rights of any party hereto with reference to the penalties and interest claimed by them in the amounts aforesaid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff The State of Texas, for and on behalf of itself and the County of Jefferson, do have and recover of and from the defendants, Reconstruction Finance Corporation and the Federal Facilities Corporation, jointly and severally, the sum of Thirty-three Thousand, One Hundred Ninety-eight Dollars ($33,198), being the total sum of penalties and interest hereinabove set out, with interest thereon at six per cent (6%) per annum until paid, which said sum, together with the sums above referred to which were heretofore withdrawn and which are by this judgment ordered to be paid, constitute the total of all taxes, interest and penalties on the assessment on the property described in plaintiff's complaint, being generally referred to by the defendants as Plancor 933, Plancor 983 and Plancor 1347, and being the same property described in the rendition for taxes made by the Reconstruction Finance Corporation to the Tax Assessor-Collector of Jefferson County for the year 1953.

All amounts due under this judgment shall be payable to the Tax Assessor-Collector of Jefferson County, Texas.

It is further ORDERED that execution or such other legal process as provided by law may issue to enforce this judgment.

DATED this the 8th day of April, 1955.

(Signed) JOE W. SHEEHY
Judge

APPROVED AS TO FORM:

RAMIE H. GRIFFIN
Criminal District Attorney of
Jefferson County, Texas

By /s/ FRANK M. ADAMS
FRANK M. ADAMS
Assistant Criminal
District Attorney

JOHN BEN SHEPPERD
Attorney General of the
State of Texas

By /s/ L. P. LOLLAR
L. P. LOLLAR
Assistant Attorney General
Attorneys for Plaintiff

/s/ B. H. FLY
B. H. FLY
Field Counsel,
Reconstruction Finance
Corporation and Federal
Facilities Corporation

VINSON, ELKINS, WEEMS & SEARLS
By /s/ C. E. BRYSON
/s/ C. E. BRYSON
C. E. BRYSON
/s/ BEN H. RICE, III
BEN H. RICE, III
Attorneys for Defendants

NOTICE OF APPEAL

Filed April 21, 1955

(Title Omitted)

Notice is hereby given that Reconstruction Finance Corporation and the Federal Facilities Corporation, the defendants above named in the above styled and numbered cause, hereby appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the final judgment in the above entitled cause entered in this action on the 8th day of April, 1955, which provides as follows:

> "It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff The State of Texas, for and on behalf of itself and the County of Jefferson, do have and recover of and from the defendants, Reconstruction Finance Corporation and the Federal Facilities Corporation, jointly and severally, the sum of Thirty-three Thousand, One Hundred Ninety-eight Dollars ($33,198), being the total sum of penalties and interest hereinabove set out, with interest thereon at six per cent (6%) per annum until paid, which said sum, together with the sums above referred to which were heretofore withdrawn and which are by this judgment ordered to be paid, constitute the total of all taxes, interest and penalties on the assessment on the property described in plaintiff's complaint, being generally referred to by the defendants as Plancor 933, Plancor 983 and Plancor 1347, and being the same property described in the rendition for taxes made by the Reconstruction Finance Corporation to the Tax Assessor-Collector of Jefferson County for the year 1953.
>
> "• • • • • •

"It is further ORDERED that execution or such other legal process as provided by law may issue to enforce this judgment."

DATED this the 20th day of April, 1955.

/s/ B. H. FLY

.....

B. H. Fly

Field Counsel,
Reconstruction Finance Corporation
and Federal Facilities Corporation
400 Federal Bldg., Dallas, Texas

Vinson, Elkins, Weems & Searls

By /s/ C. E. BRYSON

/s/ C. E. BRYSON

C. E. Bryson

/s/ BEN H. RICE, III

Ben H. Rice, III
11th Floor Esperson Building
Houston 2, Texas

Attorneys for Appellants.

BOND

Filed April 21, 1955

(Title Omitted)

KNOW ALL MEN BY THESE PRESENTS that we, Reconstruction Finance Corporation and Federal Facilities Corporation, as Principal, and The Ætna Casualty and Surety Company, as Surety, are held and firmly bound unto The State of Texas, in behalf of itself and Jefferson County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor-Collector of taxes for said County, in the sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said State of Texas, in behalf of itself and Jefferson County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor-Collector of taxes for said County, for itself, its successors and assigns, to which judgment we bind ourselves, our successors and assigns, jointly and severally.

WHEREAS, on the 8th day of April, 1955, a judgment was entered in the above entitled action against the defendants therein and the said defendants have duly filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit.

NOW, THEREFORE, the condition of this bond is that if the said Reconstruction Finance Corporation and Federal Facilities Corporation shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the

Court of Appeals may award if the judgment is modified, then the above obligation to be void, otherwise to remain in full force and effect.

RECONSTRUCTION FINANCE CORPORATION

FEDERAL FACILITIES CORPORATION

By: VINSON, ELKINS, WEEMS & SEARLS

By /s/ C. E. BRYSON

/s/ C. E. BRYSON

C. E. BRYSON

/s/ BEN H. RICE, III

BEN H. RICE, III

/s/ B. H. FLY

B. H. FLY

Field Counsel,
Reconstruction Finance
Corporation and Federal
Facilities Corporation
Principal

THE ÆTNA CASUALTY AND SURETY COMPANY

By /s/ A. E. WAGENHAUSER

Attorney-in-Fact
Surety

(SEAL)

The Ætna Casualty and Surety Company

Hartford, Connecticut

Certificate of Authority of Attorney(s)-in-Fact

KNOW ALL MEN BY THESE PRESENTS, That *The Ætna Casualty and Surety Company,* a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint A. D. Langham, B. Wendell Phillips or A. E. Wagenhauser of Houston, Texas, its true and lawful Attorney(s), with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated ,
the following instrument(s): for The Ætna Casualty and Surety Company, as surety, by his sole signature and act any and all bonds, undertakings, and other writings obligatory in the nature of a bond, provided the amount of the bond shall not in any case exceed the sum of FIFTY THOUSAND ($50,000.00) DOLLARS and to bind *The Ætna Casualty and Surety Company,* thereby as fully and to the same extent as if the same were signed by the duly authorized officers of *The Ætna Casualty and Surety Company,* and all the acts of said Attorney(s), pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following provisions of the by-laws of the Company which provisions are now in full force and effect and are the only applicable provisions of said by-laws.

ARTICLE IV—Section 8. The President, any Vice-President, or any Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf

of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

ARTICLE IV—Section 10. Any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President or a Vice-President or by a Resident Vice-President, pursuant to the power prescribed in the certificate of authority of such Resident Vice-President, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

IN WITNESS WHEREOF, *The Ætna Casualty and Surety Company,* has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 20 day of April, A.D., 1955.

The Ætna Casualty and Surety Company,

By /s/ H. E. ROWELL
Secretary.

(SEAL)

State of Connecticut, County of Hartford—ss:

On this 20 day of April, A.D., 1955, before be personally came H. E. ROWELL, to me known, who, being by me duly sworn, did depose and say: that he is Secretary of *The Ætna Casualty and Surety Company*, the corporation described in and which executed the above instrument, at its Home Office; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; and that he executed the said instrument on behalf of the corporation by authority of his office under the by-laws thereof.

(SEAL)

Certificate No. 465992

/s/ GRACE E. DONNALLY

Notary Public.
My Commission Expires Mar. 31, 1958.

DESIGNATION

Filed May 4, 1955

(Title Omitted)

To the Clerk of the United States District Court for the Eastern District of Texas, Beaumont Division:

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, Appellants designate the following portions of the record to be contained in the record on appeal in the above entitled action to the United States Court of Appeals for the Fifth Circuit, which designation is for the whole record, to-wit:

1. Plaintiff's Complaint.

2. Answer of Defendants.
3. Stipulation of counsel.
4. Motion by Jefferson County, Texas to withdraw $124,300 from the Registry of the Court.
5. Order on the above Motion dated December , 1954, ordering and directing the Clerk of this Court to pay to Jefferson County, Texas the sum of $124,300 from the sums deposited in the registry of the Court by the defendants.
6. Judgment of the Court.
7. Notice of Appeal with date of filing.
8. Appeal Bond.
9. This designation.

DATED this 3rd day of May, 1955.

B. H. Fly
Field Counsel,
Reconstruction Finance Corporation
and Federal Facilities Corporation
400 Federal Building
Dallas, Texas

Vinson, Elkins, Weems & Searls

By /s/ C. E. BRYSON
/s/ C. E. BRYSON
C. E. Bryson

/s/ BEN H. RICE, III
Ben H. Rice, III
11th Floor Esperson Building
Houston 2, Texas
Attorneys for Appellants

Certificate Of Service

A copy of the foregoing Designation has been served on the plaintiff by mailing copies thereof to Mr. John Ben Sheppard, Attorney General of Texas, Att'n Mr. L. P. Lollar, Assistant Attorney General at Austin, Texas and Criminal District Attorney of Jefferson County, Texas, Att'n Mr. Frank N. Adams, Assistant Criminal District Attorney at Beaumont, Texas, with postage prepaid, this the 3rd day of May, 1955.

/s/ C. E. BRYSON

CLERK'S CERTIFICATE
In the District Court of the United States
For the Eastern District of Texas
Beaumont Division

I, JAMES R. COONEY, CLERK of the United States District Court for the Eastern District of Texas, do hereby certify that the above and foregoing is a true, full, correct and complete transcript of the Record in Civil Action No. 2696 in the Beaumont Division of said Court, entitled THE STATE OF TEXAS, Plaintiff, v. RECONSTRUCTION FINANCE CORPORATION and FEDERAL FACILITIES CORPORATION, Defendants, as fully as the same is called for in the Designation as to Contents of the Record on Appeal, and as remains on file and of record in my office at Beaumont, Texas.

WITNESS MY HAND officially and the seal of said Court at Beaumont, Texas, this the 19th day of May, 1955.

JAMES R. COONEY
Clerk

(SEAL)

By /s/ MARY G. WAKEFIELD
Deputy Clerk